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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09 667,284 | 09 22 2000 | Thomas D. Dickson JR. | 8132 | 1192 |

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EXAMINER

BECKER, DREW E

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1761

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/667,284

Applicant(s)

DICKSON ET AL

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 34-41 is/are pending in the application.
- 4a) Of the above claim(s) 13-29 and 34-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other

DETAILED ACTION

Request for Continued Examination

1. The request filed on December 20, 2002 for an RCE based on parent Application No. 09/667,284 is acceptable and an RCE has been established. An action on the RCE follows.

Election/Restrictions

2. This application contains claims 13-29 and 34-40 drawn to an invention nonelected with traverse in Paper No. 6. A complete reply to the action must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 7 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Reese et al [Pat. No. 5,619,901].
Reese et al teach a blending apparatus comprising a container at a blending location (Figure 1, #13), liquid supply lines (Figure 10B, #41), a blending device (Figure 1, #12),

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an ice supply which acts as a refrigeration system (Figure 2, #19), and a single, self-contained, stand-alone preparation and processing station to contain it all (Figure 1).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

6. Claims 1, 4-6, and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al as applied above, in view of Farrell [Pat. No. 6,326,047]. Reese et al teach the above mentioned concepts. Reese et al also teach a control panel with a microprocessor (Figure 1, #54). Reese et al do not recite a peristaltic pump, a cleaning location with a cleaning liquid supply line, or six food supply lines. Farrell teaches a blending device comprising a peristaltic pump (Figure 5, #26). It would have been obvious to one of ordinary skill in the art to incorporate the peristaltic pump of Farrell into the invention of Reese et al since both are directed to blending devices, since Reese et al already included liquid supply sources (Figure 1, #20), since Reese et al required a means to provide precise portion control of the beverage or drink mix, since peristaltic pumps were a commonly known means to provide a metered supply of liquid as shown by Farrell, and since pumps were not dependent upon gravity, thereby permitting the location of the fluid tanks to another location, for instance below or beside the blending container, to provide more operating space in the kitchen or workplace.

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Although Reese et al do not specifically mention a cleaning location with a cleaning liquid supply line, it would have been obvious to one of ordinary skill in the art to provide a sink, with warm water from a spigot, in the invention of Reese et al in since this was the commonly known and accepted means to clean blender containers, and since microorganisms could grow on a blending container which has not been cleaned and thus create a risk of food borne illness. It would have been obvious to one of ordinary skill in the art to provide six supply lines with the invention of Reese et al since Reese et al already illustrated four supply lines (Figure 1), since Reese et al teach using "any reasonable number of receptacles" (column 5, lines 6-10), and since six would certainly be considered a reasonable number in the art of blending devices. Phrases such as "wherein the foodstuffs comprise..." are merely preferred methods of using the claimed apparatus and as such are not given patentable weight.

7. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al as applied above, in view of Frank et al [Pat. No. 6,536,224].

Reese et al teach the above mentioned components. Reese et al do not recite a water supply. Frank et al teach a blending apparatus comprising a water supply (Figure 7, #21). It would have been obvious to one of ordinary skill in the art to include the water supply of Frank et al into the invention of Reese et al since both are directed to blending devices, since Reese et al already included liquid supply sources (Figure 1, #20) and taught the use of other liquids (column 5, line 60), since a water supply was commonly included in blending devices as shown by Frank et al (Figure 7, #21), and since the

diversity of beverages which could be made by the device of Reese et al would be expanded due to the fact that many beverage mixtures commonly required water as an ingredient.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miller [Pat. No. 6,126,983] teaches a blending device with multiple liquid supplies.

Response to Arguments

9. Applicant's reply filed December 20, 2002 has been fully considered but it lacks any arguments to the prior rejection. Therefore, the examiner's comments contained in the Final rejection of paper no. 11 are still relied upon.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew E Becker
Examiner
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April 5, 2003